

BOISE, FRIDAY, DECEMBER 5, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**MICHAEL ANTHONY JONES, individually)
and as guardian ad item for RHYS)
ALEXANDER JONES (DOB 8/20/99) and)
MOIRA EIBHLIN JONES (DOB 7/04/02),)
LYNNE ROYER, as natural mother of LORI)
MARIE JONES, deceased, and KIM)
ROYER, as step-father of LORI MARIE)
JONES, deceased, husband and wife, and)
HAROLD BOWERS,)**

Plaintiffs-Respondents,)

v.)

**RICHARD E. CRAWFORTH, bankruptcy)
trustee for B&B AUTOTRANSFUSION)
SERVICES, INC., an Idaho corporation,)**

Defendant-Appellant,)

and)

**ANESTHESIOLOGY CONSULTANTS OF)
TREASURE VALLEY, PLLC, DEBORAH)
JENKINS, M.D., THOMAS LARK, M.D.,)
HEALTHSOUTH TREASURE VALLEY)
HOSPITAL, and JOHN DOES I through V,)**

Defendants.)

Docket No. 33956

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Lynch & Associates, Boise, and Moffatt, Thomas, Barrett, Rock & Fields, Boise, for appellant.

Hepworth, Lezamiz & Janis, Chtd., Boise; Comstock & Bush, Boise; Mahoney Law, PLLC., Boise, for respondents.

B&B Autotransfusion Services, Inc. appeals from a medical malpractice/wrongful death case filed after the death of Lori Jones during lumbar spine surgery at HealthSouth Treasure Valley Hospital (TVH). The suit was filed against two anesthesiologists and Jeri Kurtz, the certified cell saver technician employed by B&B. A jury found Kurtz 49% responsible for the death. A judgment of more than \$2.9 million was entered against B&B.

B&B has appealed, raising a number of issues: (1) was Kurtz a “medical technologist” or other health care provider subject to I.C. § 6-1012; (2) should the plaintiffs have been allowed to produce expert witnesses to offer opinions on whether Kurtz’s conduct was “reckless”; (3) was the trial court’s jury instruction defining “reckless” erroneous; (4) did the trial court err in refusing to put Haemonetics Corporation, TVH, and/or Anesthesiology Consultants of Treasure Valley on the special verdict form; (5) was it reversible error to exclude evidence of TVH’s revised autotransfusion protocol; and (6) should the testimony of defense witnesses Benson, Hauser, Migliori, Britton, and Hine have been barred or restricted.

BOISE, FRIDAY, DECEMBER 5, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**MICHAEL ANTHONY JONES, individually)
and as guardian ad litem for RHYS)
ALEXANDER JONES (DOB 8/20/99) and)
MOIRA EIBHLIN JONES (DOB 7/04/02),)**

Docket No. 33905

Plaintiffs-Appellants-Cross Respondents,)

and)

**LYNNE ROYER, as natural mother of LORI)
MARIE JONES, deceased, and KIM)
ROYER, as step-father of LORI MARIE)
JONES, deceased, husband and wife, and)
HAROLD BOWERS,)**

Plaintiffs-Cross Respondents,)

v.)

**HEALTHSOUTH TREASURE VALLEY)
HOSPITAL,)**

Defendant-Respondent-Cross Appellant,)

and)

**ANESTHESIOLOGY CONSULTANTS OF)
TREASURE VALLEY, PLLC, DEBORAH)
JENKINS, M.D., THOMAS LARK, M.D.,)
B&B AUTOTRANSFUSION SERVICES,)
INC., an Idaho corporation,)
HAEMONETICS CORPORATION, a)
Massachusetts corporation; and JOHN DOES)
I through V,)**

Defendants.)

**LYNNE ROYER, as natural mother of)
LORIE MARIE JONES, deceased,)**

Plaintiff-Appellant,)

and)

Docket No. 33907

)
MICHAEL ANTHONY JONES, individually)
and as guardian ad litem for RHYS)
ALEXANDER JONES (DOB 8/20/99) and)
MOIRA EIBHLIN JONES (DOB 7/4/02),)
and KIM ROYER, as step-father of LORI)
MARIE JONES, deceased, and HAROLD)
BOWERS,)

)
Plaintiffs,)

)
v.)

)
HEALTHSOUTH TREASURE VALLEY)
HOSPITAL,)

)
Defendant-Respondent,)

)
and)

)
ANESTHESIOLOGY CONSULTANTS OF)
TREASURE VALLEY, PLLC, DEBORAH)
JENKINS, M.D., THOMAS LARK, M.D.,)
B&B AUTOTRANSFUSION SERVICES,)
INC., an Idaho corporation,)
HAEMONETICS CORPORATION, a)
Massachusetts corporation, and JOHN DOES)
I through V,)

)
Defendants.)

HAROLD BOWERS,)

)
Plaintiff-Appellant,)

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and)

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MICHAEL ANTHONY JONES, individually)
and as guardian ad litem for RHYS)
ALEXANDER JONES (DOB 8/20/99) and)
MOIRA EIBHLIN JONES (DOB 7/4/02),)
LYNNE ROYER, as natural mother of LORI)
MARIE JONES, deceased, and KIM)
ROYER, as step-father of LORI MARIE)
JONES, deceased, husband and wife,)

)

Plaintiffs,)

Docket No. 33908

v.

**HEALTHSOUTH TREASURE VALLEY
HOSPITAL,**

Defendant-Respondent,

and

**ANESTHESIOLOGY CONSULTANTS OF
TREASURE VALLEY, PLLC, DEBORAH
JENKINS, M.D., THOMAS LARK, M.D.,
B&B AUTOTRANSFUSION SERVICES,
INC., an Idaho corporation,
HAEMONETICS CORPORATION, a
Massachusetts corporation, and JOHN DOES
I through V,**

Defendants.

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Hepworth, Lezamiz & Janis, Chtd., for appellants.

Powers Thomson, P.C., Boise, for Respondents.

Comstock & Bush, Boise, for cross respondents, appellant Royer.

Mahoney Law, PLLC, Boise, for cross respondents, appellant Bowers.

On August 2, 2004, Lori Jones underwent lumber spine surgery at Healthsouth Treasure Valley Memorial Hospital (TVH). During the surgery, Mrs. Jones' blood was salvaged using a cell saver machine, which was operated by Jeri Kurtz, a certified cell saver technician employed by B&B Autotranfusion Services, Inc. After Mrs. Jones' blood was collected, cleaned, and delivered into the reinfusion bag, Dr. Thomas Lark, the attending anesthesiologist, arranged for the reinfusion process to take place via gravity. Dr. Deborah Jenkins, another anesthesiologist who temporarily relieved Dr. Lark during the surgery, placed a pressure cuff around the reinfusion bag to speed up the process. As a result, the remaining air in the refusion bag was squeezed into Mrs. Jones' body, causing her to sustain a fatal air embolism.

Appellants/Cross-Respondents Michael Anthony Jones, et al., filed a medical malpractice/wrongful death suit against various defendants, including Respondent/Cross-

Appellant TVH, claiming TVH was vicariously liable for the negligence of the two anesthesiologists and the cell saver technician under the theory of apparent agency. Before trial, TVH moved for summary judgment, claiming Appellants had failed to establish through expert testimony that TVH had breached the local standard of care required for a hospital. Plaintiff Royer filed a cross motion for partial summary judgment against TVH on the issue of apparent agency, and Plaintiffs Jones and Bowers joined in this argument. The district court declined to extend the doctrine of apparent agency to tort claims and, therefore, denied Appellants' motion for partial summary judgment. Accordingly, the district court granted TVH's motion for summary judgment.

Appellants appeal from the district court's denial of their motion for partial summary judgment, requesting this Court to extend the doctrine of apparent agency to encompass tort claims in Idaho, specifically in the medical malpractice context to hold hospitals vicariously liable for the negligence of their apparent agents. As such, Appellants ask this Court to reverse the district court's award of summary judgment to TVH as it relates to Ms. Kurtz, the cell saver technician. TVH cross appeals, arguing the district court abused its discretion in denying TVH's request for discretionary costs.

BOISE, FRIDAY, DECEMBER 5, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	
v.)	Docket No. 35241
)	
SHANE MARVIN BISHOP,)	
)	
Defendant-Appellant.)	
)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
Gooding County. Hon. R. Barry Wood, District Judge.

Molly Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise for respondent.

On May 26, 2005, Hagerman City Police Chief, Loren Miller, received a tip from the city superintendent that a man, later identified as Marvin Bishop, had attempted to sell methamphetamine to two carnival workers. Based on the tip, Miller located Bishop and stopped him to ask a few questions. After a brief exchange, Miller told Bishop that he was going to conduct a pat-down search for weapons. Initially, Bishop refused to consent to the search but, once Miller informed him that he would be arrested if he did not cooperate, Bishop turned around and placed his hands on the police car. Almost immediately after Miller began the pat-down, however, Bishop turned back around and told Miller that he did not want to be searched. Miller then informed Bishop that he was under arrest for obstructing. A struggle ensued but, after back-up arrived, Miller was able to handcuff Bishop and finish the search. During the search, Miller discovered a baggie in Bishop's pocket that contained methamphetamine.

Bishop was charged with possession of a controlled substance, possession of drug paraphernalia, and resisting an officer. He filed a motion to suppress the evidence arguing that the stop and frisk were unconstitutional. The district court denied the motion and Bishop entered a conditional guilty plea, which preserved his right to appeal the denial of his motion. Bishop appealed to the Idaho Court of Appeals, which reversed the district court and vacated Bishop's judgment of conviction. The State filed a petition for review by the Supreme Court, which was granted. On review, the State argues that the Court of Appeals' decision was not in accordance with the law because it used the wrong standard in determining that the methamphetamine should have been excluded.